

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

<hr/>)	File No.: ACOP-NE-05-4004
In the Matter of:)	FMF No.: 39545
New Ventures Associates LLC)	
Crow Lane Landfill Closure)	Administrative Consent Order
)	With Penalty And
Newburyport, Massachusetts)	Notice of Noncompliance
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I. THE PARTIES

1. The Department of Environmental Protection (“the Department”) is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L. c. 21A, §7. The Department maintains its principal and Metropolitan Boston/Northeast Regional Offices at One Winter Street, Boston, Massachusetts 02108.
2. New Ventures Associates, LLC (“New Ventures”) is a Delaware corporation with a business address at 85-87 Boston Street, Everett, Massachusetts 02149. New Ventures is the current owner of the Crow Lane Landfill located on Crow Lane in Newburyport, Massachusetts (the “Facility”).

II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of M.G.L. c.21H, M.G.L. c.111, §150A and §150A½, and the Site Assignment and Solid Waste Management Regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000 and M.G.L. c. 111 §§ 142 A through O and the Air Pollution Control Regulations promulgated thereunder at 310 CMR 7.00.
4. The Department has authority under M.G.L. c. 21A, §16, and the Administrative Penalty Regulations promulgated thereunder at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
5. For purposes of M.G.L. c. 21A, §16, and 310 CMR 5.00, this Consent Order shall serve as a Notice of Noncompliance for New Ventures’ noncompliance with the requirements cited herein. Future violations of those requirements or of this Consent Order may result, without limitation, in the assessment of additional civil administrative penalties for each day, or portion thereof, each such violation occurs or continues.

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6. The Facility is an uncapped, unlined, and inactive landfill. New Ventures purchased the site on which the Facility is located from City Landfill Trust of Hampton Falls, New Hampshire in April of 2000.
7. On February 27, 2003, the Department and New Ventures entered into an Administrative Consent Order, ACO-NE-01-4001, (the "ACO") for the assessment and closure of the Facility. The ACO is a separate order by the Department and remains in effect notwithstanding this Consent Order. The ACO contains, inter alia, the following provisions:

- a. Paragraph 13 of Section III of the ACO reads in part:

"New Ventures shall comply with the landfill assessment and closure design procedures set forth at 310 CMR 19.000, the procedures for Timely Actions and Fees set forth at 310 CMR 4.00, the Department's *Landfill Technical Guidance Manual* ("Guidance Manual" revised May 1997), applicable provisions of the Guideline¹, any amendments and/or modifications to these documents, and shall perform landfill closure design and landfill closure in accordance with the following schedule...."

- b. Paragraph 14 of Section III of the ACO reads in part:

"Prior to the Department issuing an approval of the interim grading plan under paragraph III. 13. C. above, New Ventures shall have furnished to the Department a Financial Assurance Mechanism (FAM), in accordance with 310 CMR 19.051, to assure completion of all obligations of this ACO and regulations. "All obligations" shall include but not be limited to the maintenance and monitoring of the closed facility (refer to 310 CMR 19.142). This FAM shall be reviewed periodically and increased as required by 310 CMR 19.051. The first periodic review and any necessary increase shall be made to this FAM prior to the Department's approval of the CAD."

- c. Paragraph 21 of Section III of the ACO reads:

"The actions required by this ACO are subject to approval by the Department and shall be performed in accordance with M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000, the Guidance Manual, Guideline and all other applicable federal, state and local laws, regulations and approvals."

The Department alleges that New Ventures has not complied with the foregoing provisions of the ACO.

¹ The Department's policy for the closure of inactive landfills: "Guidelines for Determining Closure Activities at Unlined Landfills", July 6, 2001.

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8. On March 21, 2003, the Department received an application from New Ventures, BWPSW11-Transmittal No. W036927, for approval of the Conceptual Closure Plan for the placement of shaping and grading material at the Facility.
9. On May 8, 2003, the Department issued a Notice of Administrative Deficiency (NOAD) to New Ventures pursuant to 310 CMR 19.000 and 310 CMR 4.00 for the Conceptual Closure Plan.
10. On June 10, 2003, the Department received New Ventures' response to the NOAD including proposed revisions to the Conceptual Closure Plan.
11. On October 21, 2003, the Department issued an approval to New Ventures for the Conceptual Closure Plan (the "Closure Plan Approval"). Pursuant to 310 CMR 19.043(1) the Department's Closure Plan Approval included the following conditions to assure compliance with 310 CMR 19.000 and to protect the public health and safety and the environment:

- a. Condition 2, which reads in part:

"2. In the event the relocation of waste and/or the grading & shaping of the Landfill causes a nuisance condition due to odors, New Ventures shall:

- a. Take actions as appropriate to control and mitigate those odors. Such actions shall include, when necessary, cessation of operations until conditions improve and/or other actions that can be implemented to control the odors. These may include, but are not limited to, varying the C&D fines/soil mixture ratio, the placement of daily or intermediate cover materials, and/or the installation of an active gas collection and treatment system or any other action deemed necessary by the Department including, if directed in writing by the Department, the cessation of the receipt of C&D residuals and/or fines."

- b. Condition 6, which reads:

"6. Paragraph b under Gas Management on page 3 of the Plan, shall be deleted and replaced with the following:

'C&D fines shall be mixed with mineral aggregate (such as, soil or street sweepings) at a ratio of not less than one part mineral aggregate to each part C&D fines (1:1 vol./vol.), unless another ratio is approved by the Department. The generation of landfill gas at the site will be monitored weekly initially for H₂S. The Scope of Work for the Comprehensive Site Assessment required by paragraph 13 D. of the ACO will include a plan

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for monitoring the generation of landfill gas during the placement of shaping and grading material to determine whether conditions exist for the generation of H₂S gas (such as, anaerobic conditions, presence of H₂S) and to support any proposed change in the mixing ratio. This will include continued routine monitoring of the ambient air for H₂S.”

The Department alleges that New Ventures has not complied with either of the foregoing conditions of the Closure Plan Approval.

12. On October 20, 2003, New Ventures, pursuant to Condition 14 of the ACO and 310 CMR 19.051, established a Corrective Action Standby Trust (the “Trust”) as a FAM for the Facility. Upon execution of the Trust New Ventures delivered to the Trustee an initial deposit of Two-Million Fifty Thousand dollars (\$2,050,000) to be deposited into the New Ventures Standby Trust Account (the “Trust Account”). The Trust provided New Ventures would make the following three additional deposits to the Trust Account:
 - a. Within one hundred and eighty days (180) after execution of the Trust the amount of \$325,000;
 - b. Within three hundred and sixty days (360) after execution of the Trust the amount of \$300,000; and
 - c. Within five hundred and forty (540) days after execution of the Trust the amount of \$300,000.

New Ventures has not made any of these additional deposits into the Trust Account.

13. On December 5, 2003, the Department received an application from New Ventures for approval of the Initial Site Assessment (ISA) for the Facility. The ISA included a Scope of Work for conducting a Comprehensive Site Assessment (CSA) of the Facility pursuant to 310 CMR 19.150(5). On March 16, 2004, New Ventures provided the Department with supplemental information for the ISA in response to a Notice of Technical Deficiency issued by the Department on February 20, 2004.
14. On July 20, 2004, Department personnel inspected the Facility. The inspection included, but was not limited to: observing construction activities, walking the site, and reviewing various Facility records, including the daily logs and the Engineer’s² inspection reports. During the July 20, 2004 inspection, Department personnel observed the following:
 - a. Black leachate with a slight septage odor at the following locations: the northeast section adjacent to the haul road; the southwest/west corner discharging to the wetland; and at a point along the interior edge of the west/northwest berm.

² GZA GeoEnvironmental Inc. of Norwood, Massachusetts was the Engineer of Record for the project until January 1, 2005. On that date, Sitec Environmental assumed the duties of Engineer of Record for the project.

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- b. Exposed C&D residuals and fines were observed on the western slope and on the upper surface of the landfill.
 - c. C&D residuals and fines were not being placed with soil at the required ratio of 1:1 by volume (1:1 vol./vol.).
 - d. C&D residuals and fines were being mixed with material excavated at the Facility that included solid waste.
 - e. Approximately 300 cubic yards of “urban fill” containing a trace of brick and concrete (<5%) and a pile of “loam” that had been stripped from the Facility had been stockpiled adjacent to the haul road.
15. On July 23, 2004, the Department, pursuant to 310 CMR 19.040, issued a modification of the Closure Plan Approval to New Ventures. The modification required, inter alia, that New Ventures establish and operate a permanent weather station at the Facility to monitor wind speed and velocity to aid in determining whether any odors detected in the surrounding area originated from the Facility. New Ventures installed the weather station on or about September 21, 2004.
16. On July 23, 2004, pursuant to 310 CMR 19.037, the Department issued a final approval of the ISA and the CSA Scope of Work, which included a Landfill Gas Monitoring Plan.
17. On September 2, 2004, Department personnel inspected the Facility and observed conditions similar to those previously observed on July 20, 2004, as set forth in Paragraph 14 above.
18. On September 20, 2004, Department personnel inspected the Facility and observed conditions similar to those previously observed on July 20, 2004 and September 2, 2004, except that the “septage” odor was detected at the entrance to the Facility on Crow Lane and no off-site soil was stockpiled at the Facility. The source of the odor appeared to be the black leachate emanating from the northeast section of the landfill. In addition, during the September 20, 2004 inspection, Department personnel determined that New Ventures was conducting bi-weekly ambient air monitoring for landfill gas, including H₂S, rather than weekly monitoring, as required by the Conceptual Closure Plan, the Scope of Work for the Comprehensive Site Assessment (“CSA”) and the Department’s approvals thereof. In addition, New Ventures was not utilizing an analytical instrument with a detection limit equivalent to that of a Jerome Meter for hydrogen sulfide (H₂S), as required by the Department’s approvals of the Conceptual Closure Plan and the Scope of Work for the CSA.

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19. On October 19, 2004, the Department issued a Unilateral Administrative Order to New Ventures, UAO-NE-04-4004, (the "UAO"). The UAO in part required New Ventures to mitigate and control the release of odors and leachate from the Facility, as follows.

a. Paragraph 23 of Section III of the UAO, which reads:

"New Ventures shall, upon receipt of this Order, immediately cease the receipt and placement of C&D Residuals or Fines at the Facility, except in accordance with the Conceptual Closure Plan as approved by the Department and the provisions of Paragraphs 24 and 25 of this Part."

b. Paragraph 24 of Section III of the UAO, which reads:

"Prior to recommending the receipt and placement of C&D residuals and fines at the Facility, New Ventures shall establish and maintain on-site a minimum soil stockpile of 5000 cubic yards (the "Cover Stockpile"). The loam stockpile described in Paragraph 14 above and present at the Facility on October 1, 2004 shall not be considered part of the Cover Stockpile for purposes of this Order (that is, shall not be included in the 5000 cubic yards). The Cover Stockpile shall be used for the purpose of complying with Conditions 6 and 7 of the Closure Plan Approval including, the covering of exposed waste, erosion control, control of odors and mixing with C&D residuals and fines at the required pre-compaction ratio of 1 to 1 by volume (vol./vol.). For purposes of determining compliance with the provisions of this Paragraph the Department shall use an across the scale conversion factor for the soil of 1.4 tons per cubic yard (that is, the uncompacted density)."

c. Paragraph 26 of Section III of the UAO, which reads in part:

"New Ventures shall have the current Engineer of Record for the project... conduct an inspection of the Facility within seven (7) days of the date of receipt of this Order... New Ventures shall have the Engineer of Record prepare a report (Inspection Report) of the findings of his/her inspection that includes without limitation...:

- a. An odor control plan, and
- b. A leachate control plan...."

20. On or about November 12, 2004, the Department received from New Ventures the Engineer's Inspection Report, dated October 28, 2004, and an odor and leachate control plan ("Odor and Leachate Control Plan") as required by Paragraph 26 of the UAO.

21. On December 6, 2004, pursuant to 310 CMR 19.037, the Department approved New Ventures' Odor and Leachate Control Plan (the "Odor Plan Approval").

22. The Department's Odor Plan Approval required New Ventures to cease the receipt and placement of C&D residuals and fines at the Facility until New Ventures met the following conditions:

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- a. Submitting, for review and approval by the Department, a detailed plan for the installation and maintenance of a landfill gas extraction and treatment system.
- b. Submitting a revised cost estimate ("Proforma") of the cost of completing the landfill closure, including installation of the gas collection and treatment system, and maintenance and monitoring of the Facility, the gas collection and treatment system and other environmental monitoring systems for a minimum period of 30 years from the estimated date of completion of the closure.
- c. Demonstrating, by adequately supported data, that any approved short-term odor and leachate controls are adequately functioning and mitigating the occurrence of odors.
- d. Demonstrating that New Ventures has an adequate supply and sources of soil for mixing with the C&D residuals and fines at the required ratio of at least 1 part soil to each part residuals and/or fines by volume.
- e. Submitting for Department approval a new operations plan for the placement of C&D residuals and fines that includes, but is not limited to:
 - i. The sequential placement of grading and shaping material at the Landfill limiting the area of the Landfill that is exposed;
 - ii. Measures to control the generation of odors during the placement of C & D residuals and fines; and
 - iii. Institutional controls to assure that C&D residuals and/or fines will not be accepted at the Landfill if an adequate supply of soil is not available on any given day to maintain the required 1:1 mixture by volume.

The Department alleges that to date, New Ventures has not satisfied conditions a., c., d., and e. above.

23. The Department's Odor Plan Approval also required New Ventures to revise the ambient air-monitoring program at the Facility to include:
- a. Monitoring for hydrogen sulfide (H₂S) using an analytical instrument with a detection limit equivalent to that of a Jerome Meter (approximately 3 parts per billion).
 - b. Sampling the air monitoring stations at the Facility each day prior to the commencement of activities at the Facility, and after the cessation of activities for the day.
 - c. Monitoring at additional locations and times as necessary to assess ambient air conditions at the Landfill during operation.

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- d. Installation and use of a continuous air monitoring station in the vicinity of Charmanski and Wildwood Drives.
- e. In the event of an odor complaint, that New Ventures obtain an ambient air sample from the Landfill at the sampling station most directly upwind of the location where the complaint originated.

The Department alleges that to date, New Ventures has not satisfied conditions c. and e. above.

- 24. On January 4, 2005, the Department received from New Ventures a request, dated December 23, 2004, to resume the placement of C&D residuals and fines as grading and shaping material at the Facility.
- 25. On or about January 7, 2005, New Ventures established an air monitoring station at 6 Charmanski Drive.
- 26. On March 4, 2005, the Department denied New Ventures' request to resume the receipt and placement of C & D residuals and fines as grading and shaping material at the Facility because of, but not limited to, the following reasons:
 - a. New Ventures had not provided a detailed engineering plan for the installation and maintenance of a gas extraction and treatment system at the Facility as required by the Odor Plan Approval.
 - b. New Ventures had not presented adequate data, including without limitation air monitoring data, demonstrating that the short-term odor and leachate control measures were functioning and mitigating the occurrence of odors at the Facility.
 - c. Continuing complaints of odors in adjoining residential areas and detection of H₂S at the air monitoring station at 6 Charmanski Drive coincident with odor complaints from that area.
 - d. On January 5, 2005 and February 24, 2005, Department personnel inspected the Facility and observed continuing and new outbreaks of leachate and the occurrence of odors at the Facility.
- 27. As of April 11, 2005 the Department continued to receive complaints of odors from residents in the area of the Facility. Odor complaints from residents in the area of Wildwood and Charmanski Drives generally coincide with the detection of H₂S at the air monitoring station at 6 Charmanski Drive.
- 28. The Department alleges that based on the foregoing New Ventures has violated the following:

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- a. **310 CMR 19.015** – Compliance, which reads in part:

“No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility.”

- b. **310 CMR 19.043(5)** – Conditions for Permits and Authorizations, which reads in part:

“(a) Duty to Comply. The permittee shall comply at all times with the terms and conditions of the permit or approval, 310 CMR 19.000, M.G.L. c. 111, § 150A and all other applicable state and federal statutes and regulations.

.....

(c) Duty to Halt or Reduce Activity. The permittee shall halt or reduce activity whenever necessary to maintain compliance with the permit conditions, or to prevent an actual or potential threat to the public health, safety or the environment.

...

(d) Duty to Mitigate. The permittee shall remedy and shall act to prevent all potential and actual adverse impacts to persons or the environment resulting from non-compliance with terms or conditions of the permit or approval. The permittee shall repair at his own expense all damages caused by such non-compliance.

...”

- c. **310 CMR 19.116** - Surface and Ground Water Protection, which reads:

“Landfills shall prevent direct discharge of contaminated run-off or leachate from the landfill to any surface water bodies or to ground water, except in accordance with a Massachusetts Surface Water Discharge Permit or Ground Water Discharge Permit issued by the Department pursuant to 314 CMR 5.00 or 7.00, respectively, and a National Pollution Discharge Elimination System permit issued by the U.S. Environmental Protection Agency.”

- d. **310 CMR 19.130(16)** –Vector, Dust and Odor Control, which reads in part:

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“(a) The operator shall prevent vectors, dust, odors and other nuisance conditions from developing at the landfill and any other areas related to the general facility operations....”

- e. **310 CMR 19.130(30) - Leachate Collection, Treatment and Disposal**, which reads in part:

“(a) Leachate shall be collected, handled, treated on or off-site and disposed in accordance with approved plans and the permit.

....

(c) Leachate shall not be discharged directly to waters of the Commonwealth except in accordance with a discharge permit issued by the Department pursuant to 314 CMR 5.00 or 7.00.

....

(g) Inspection reports, as required under 310 CMR 19.130(35), shall include the quantity of leachate generated, the leachate disposal location, results of leachate tank testing and monitoring and other routine maintenance performed.

....

(h) Leachate collection, treatment, and disposal shall continue during the entire active life of the landfill, and during the closure and the post-closure periods.”

29. On March 31, 2005, the City of Newburyport’s Department of Public Health issued a “Notice of Violation and Order for Correction” (the “Notice”) to New Ventures under M.G.L. c. 111 § 122 (creating a Public nuisance) and Chapter 5 § 5.5.001 of the Newburyport Board of Health’s rules and regulations. The Notice alleges that odors from the Facility created nuisance conditions in off-site residential areas. The Notice directed New Ventures to utilize microbial technology to reduce the odors, to cease the recirculation of leachate into the landfill, and to apply Posi-shell cover to the landfill.
30. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. This Consent Order and New Ventures’ consent hereto shall not constitute or be construed as an admission of any fact or allegation set forth herein except for purposes of the issuance and enforcement of this Consent Order.

III. DISPOSITION AND ORDER

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For the reasons set forth above, the Department hereby issues, and New Ventures hereby consents to, the following Order:

31. The Department's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II, Paragraphs 3 and 4 above.
32. The Department hereby determines, and New Ventures hereby agrees, that the deadlines set forth below constitute reasonable times to perform the actions agreed to in this Consent Order.
33. This Consent Order shall be binding on New Ventures and on its officers, employees, agents, successors, licensees and assignees. New Ventures shall not violate this Consent Order and shall not allow or suffer its officers, employees, agents, successors, consultants, assignees, licensees or contractors to violate this Consent Order. Violation of this Consent Order by any of the foregoing shall constitute a violation of this Consent Order by New Ventures. New Ventures shall provide a copy of this Consent Order to each successor, licensee or assignee concurrent with establishing any succession, license or assignment.
34. New Ventures hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.
35. The actions required by this Consent Order shall be performed in accordance with all applicable laws and regulations, including, without limitation, M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000 and all applicable Department permits and approvals, and any conditions thereof.
36. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional Order or to seek any other relief, including penalties, with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.
37. This Consent Order references and fully incorporates the following Exhibits which are attached hereto:
 - a. Exhibit 1 Landfill Gas Extraction Engineering Design Plans,
 - b. Exhibit 2 Odor Control Plan,

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- c. Exhibit 3 Leachate Control Plan, and
 - d. Exhibit 4 Landfill Gas Monitoring Plan.
38. The Department orders and New Ventures shall perform the following actions.
39. New Ventures shall in a timely manner implement all actions necessary with regard to the release of landfill gas and leachate from the Facility to comply with 310 CMR 19.116 and 310 CMR 19.117. These actions shall include, without limitations, those required by Part III of this Consent Order.
40. New Ventures shall, without limitation, undertake the following actions to prevent Facility landfill gas from creating nuisance conditions and from creating an adverse impact to the public health, safety or welfare. New Ventures shall install a landfill gas extraction and treatment system at the Facility in accordance with the attached design plans (Exhibit 1), and implement the attached Odor Control Plan (Exhibit 2) and the actions required by Paragraphs 41 and 42 of this Consent Order. New Ventures shall install the landfill gas extraction and treatment system, as depicted in Exhibit 1, in accordance with the following schedule:
- a. The installation of the Stage 1 Landfill Gas Controls, as described in Exhibit 2, and the initiation of the operation of the system shall be completed **within sixty (60) days** of the effective date of this Consent Order;
 - b. The installation of the Stage 2 Landfill Gas Controls shall be completed **within seventy-five (75) days** of the effective date of this Consent Order; and
 - c. The remaining landfill gas wells (Stages 3 through 5) shall be installed sequentially as provided in Exhibit 2.
 - d. **Within twenty-one (21) days** of the date of completion of the installation of the Stage 2 Gas Controls, New Ventures shall submit an as-built plan for the Stage 1 and Stage 2 Landfill Gas Controls, certified by the Engineer of Record for the site in accordance with 310 CMR 19.011, to the Department.
41. New Ventures shall, without limitation, implement the attached Leachate Control Plan (Exhibit 3). In addition, **within twenty-one (21) days** of the effective date of this Consent Order New Ventures shall submit to the Department for review and approval an application for a BWP SW 22 Minor Modification of an Existing Landfill in accordance with 310 CMR 4.00 Timely Action Schedule and Fee Provision. The application shall include a plan for controlling the discharge of leachate to the wetland that boards the western boundary of the Facility and for the management of leachate recovered at the Facility. The plan shall contain, without limitation, the following:

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- a. An evaluation of the leachate collection system along the western boundary of the Facility that includes, without limitation, an assessment of the subsurface conditions in the area;
- b. An engineering design plan for controlling the discharge of leachate to the wetland along the western boundary of the landfill;
- c. Data on the composition of the leachate including, without limitation, the parameters identified in 310 CMR 19.132(1)(h), total sulfide and dissolved iron;
- d. An estimate of the total volume of leachate being recovered at the Facility;
- e. An estimate of the entire area of all wetlands impacted by leachate;
- f. A discussion of the effectiveness of all the existing leachate control measures at the Facility and the impact of the leachate recharge on the landfill;
- g. A plan for managing the recovered leachate in compliance with 310 CMR 19.130(30) that includes, without limitation:
 - i. A design plan(s) for any discharge, recirculation, treatment or storage of the recovered leachate at the Facility;
 - ii. An evaluation of the feasibility of treating the recovered leachate to mitigate the generation of odors and a plan for any such treatment;
 - iii. As required by 310 CMR 19.130(30)(f), documentation that New Ventures has obtained contracts or other appropriate guarantees for the backup handling and disposal of the recovered leachate. If New Ventures proposes off-site disposal as the primary management option for the recovered leachate then New Ventures shall document that at least two (2) off-site facilities will accept the leachate. If New Ventures proposes on-site recirculation as the primary management option then New Ventures shall document that at least one (1) off-site facility will accept the leachate;
 - iv. An implementation schedule that provides, without limitation, New Ventures shall complete installation of the leachate controls within thirty (30) days of the date of the Department's approval and that New Ventures shall submit as-built plans, certified by the Engineer of Record for the site in accordance with 310 CMR 19.011, to the Department within fourteen (14) days of the date of completion of the installation of the leachate control system.

New Ventures shall provide any additional information requested by the Department with regards to the application including any Notice of Deficiency issued by the Department pursuant to 310 CMR 4.00, within thirty (30) days of the date of receipt of the request by New Ventures.

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42. **Within sixty (60) days** of the effective date of this Consent Order, New Ventures shall submit to the Department for review and approval an application for a BWP SW 22 Minor Modification of an Existing Landfill in accordance with 310 CMR 4.00 Timely Action Schedule and Fee Provision. The application shall, without limitation, include a description of the subsurface conditions in the northeast section of the landfill and abutting wetland, an engineering design plan for controlling the release of leachate, and an implementation schedule. New Ventures shall provide any additional information requested by the Department with regards to the application including any Notice of Deficiency issued by the Department pursuant to 310 CMR 4.00, within thirty (30) days of the date of receipt of the request by New Ventures.
43. New Ventures shall conduct ambient air monitoring at the Landfill in accordance with the attached Landfill Gas Monitoring Plan (Exhibit 4).
44. **Within sixty days (60)** of the effective date of this Consent Order, New Ventures shall submit to the Department for its review and approval a Revised Operation and Maintenance Plan that consolidates the operation and maintenance procedures for the Facility into a single document.
45. The landfill gas extraction and treatment system, Exhibit 1, includes a skid-mounted open flare for treatment of the odors. The skid mounted flare is to be operated pending installation of a final permanent flare. New Ventures shall install, operate, and maintain the skid mounted flare in accordance with 310 CMR 7.00 and the following requirements. New Ventures shall:
 - a. Keep records of the skid mounted temporary open flare hours of operation, auxiliary fuel usage, and estimated emissions.
 - b. Operate the skid-mounted flare so as not to cause a condition of air pollution.
 - c. Maintain on site sufficient propane gas to be used as a supplemental fuel
 - d. Provide the Department **within twenty-one (21) days** of the effective date of this Consent Order with an operation and maintenance plan for the skid-mounted flare.
 - e. Upon initiation of operation of the flare sample the landfill gas wells and the influent gas to the flare twice each week for hydrogen sulfide, methane, oxygen, flow and temperature for the first three months. Thereafter, New Ventures may sample the landfill gas wells in accordance with Exhibit 4 and sample the influent gas to the flare weekly.
 - f. Notify the Department of the installation date of the flare and shall include the following information in the monthly progress reports required by Paragraph 47:

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- i. a description of the general operation of the flare during the preceding thirty (30) days including, without limitation, notice of any upsets or failure of the flare's operation;
 - ii. the gas monitoring results since the last report for the landfill gas vents and flare; and
 - iii. an evaluation, based on the data of the operation of the system and conditions at the Facility, of whether installation of a hydrogen sulfide treatment system prior to the flare is necessary or not.
 - g. Provide any additional information requested by the Department on the landfill gas extraction and treatment system within thirty (30) days of the date of receipt of the request by New Ventures.
 - h. Provide a Comprehensive Plan Approval application (CAP) for an air quality permit pursuant to 310 CMR 7.02 no later than the earlier of the following: **within one-hundred eighty (180) days** of the effective date of this Consent Order **or within thirty (30) days** of the date of receipt of written notice from the Department that an application must be filed.
46. New Ventures may commence the receipt and placement of C&D residuals and fines as grading and shaping material at the Facility upon the effective date of this Consent Order provided:
- a. The management and placement of the C&D residuals and fines is conducted in accordance with the Conceptual Closure Plan including, without limitation, adherence to the grades depicted on Figure C-4 of the Conceptual Closure Plan until such time as the Department approves the final grades for the Facility; and
 - b. The Engineer of Record or his/her direct employee shall observe and instruct the landfill superintendent in the proper placement and mixing of soils and C&D residuals and fines pursuant to the provisions of this Consent Order. Such observation and instruction shall continue until the Engineer of Record determines that the landfill superintendent is competent in the placement of the grading and shaping material. **Within fourteen (14) days** of the effective of this Consent Order the Engineer of Record shall certify in writing to the Department that the foregoing training has been completed and daily oversight by the Engineer of Record of the placement of shaping and grading material is not required. This certification shall be signed by the Engineer of Record and an authorized representative of New Ventures in accordance with 310 CMR 19.011.

Thereafter, the Engineer of Record or his/her direct employee shall inspect the Facility at a minimum weekly and determine whether the activities at the Facility are being conducted in accordance with the provisions of this Consent Order, and the approved plans and notify New Ventures of any corrective actions that the Engineer of Record

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believes are necessary. The Engineer of Record shall conduct such additional inspections as are necessary to oversee the activities at the Facility and to comply with 310 CMR 19.106.

47. New Ventures shall submit to the Department progress reports on the activities undertaken by New Ventures to comply with the provisions of this Consent Order. The first report shall be submitted to the Department **within fourteen (14) days** of the effective date of this Consent Order. Subsequent progress reports shall then be submitted every thirty (30) days until otherwise directed by the Department. New Ventures shall provide, without limitation, the following information in each progress report:
- a. A summary of the status of the installation and operation of the landfill gas and leachate controls;
 - b. A summary of the types and quantities of materials brought to the Facility since the previous progress report, including, without limitation: shaping and grading material (C&D residuals and fines, soil etc.), material used in construction of the berm, Pozi-shell, and material used as intermediate cover;
 - c. An inventory of stockpiled materials at the Facility;
 - d. Copies of all the Engineering Inspection Reports since the last progress report;
 - e. A statement certified by the Engineer of Record in accordance with 310 CMR 19.011 as to whether the C&D residuals and fines have been placed at the Facility during this period in accordance with the provisions of this Consent Order and the Conceptual Closure Plan including, without limitation, the mixing of the C&D residuals and fines with soil or other approved mineral aggregates at a ratio of 1 to 1 by volume;
 - f. A summary of the ambient air data collected at the Facility and off-site since the last progress report for those dates on which complaints of odors are received by New Ventures, a summary of the complaint (complainant, location, time), and the meteorological and air monitoring data for that date; and
 - g. The information required by Paragraph 45(f) above.
48. **Within thirty (30) days** of the effective date of this Consent Order, New Ventures shall deliver to the Trustee of the Trust additional cash or a Surety Bond in a form acceptable to the Department, or a letter of credit acceptable to the Department, in the amount of nine hundred and twenty-five thousand (\$925,000.00) dollars to be deposited into the Trust Account.

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49. New Ventures shall maintain and operate the Facility in accordance with the requirements of this Consent Order and any Department's approvals issued pursuant to this Consent Order.

IV. FORCE MAJEURE

50. The Department agrees to extend the time for performance of any requirement of this Consent Order if the Department determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
51. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
52. If any event occurs that delays or will delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify the Department in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay; and (iii) the timetable for taking such measures. If Respondent intends to assert that the delay or potential delay is or will be caused by a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

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53. If the Department determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in Paragraph 52 above, the Department agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order as a result of a Force Majeure event.
54. The delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

V. PENALTIES

55. The Department assesses, and New Ventures shall pay to the Commonwealth, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) as a civil administrative penalty for the violations set forth above in Part II, as follows:
- a. **Within thirty (30) days** of the effective date of this Consent Order, New Ventures shall pay to the Commonwealth the sum of Seventy-Five Thousand Dollars (\$75,000.00) in the manner set forth in Paragraph 57, below; and
 - b. The balance of the civil administrative penalty, One Hundred Seventy-Five Thousand Dollars (\$175,000.00), shall be suspended for a period of eighteen (18) months from the effective date of this Consent Order, provided that New Ventures complies with the terms and conditions of this Consent Order. If the Department determines that New Ventures has violated any provision of this Consent Order within eighteen (18) months of the effective date of this Consent Order, New Ventures shall pay to the Commonwealth, in the manner set forth in Paragraph 57, below, the balance of the civil administrative penalty in the amount of One Hundred Seventy-Five Thousand (\$175,000.00) Dollars within thirty (30) days of receipt of the Department's written demand for payment. For purposes of this paragraph, New Ventures waives any rights it has to an adjudicatory hearing on or judicial review of the Department's determination that a violation has occurred or that the suspended penalty is due.

This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of the Department to assess New Ventures additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

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56. In addition to the penalty described in Paragraph 55 of this Consent Order, New Ventures shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if New Ventures violates this Consent Order. For each day, or portion thereof, of each violation, New Ventures shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
<u>1st through 15th day</u>	\$1,000 per day
<u>16th through 30th day</u>	\$2,000 per day
<u>31st day and thereafter</u>	\$4,000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day New Ventures corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified New Ventures of a violation or act of noncompliance. The payment of stipulated civil administrative penalties shall not alter in any way New Ventures' obligation to complete performance as required by this Consent Order.

All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date the Department issues New Ventures a written demand for payment. The stipulated civil administrative penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of New Ventures' failure to comply with the requirements of this Consent Order. In the event the Department collects alternative civil administrative penalties, New Ventures shall not be required to pay such stipulated penalties pursuant to this Consent Order for the same violations.

57. New Ventures shall pay all civil administrative penalties due under this Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. New Ventures shall clearly print the name "New Ventures Associates, LLC", file number **ACOP-NE-05-4004** and New Ventures' Federal Employer Identification Number on the face of the payment, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

New Ventures shall deliver a copy of the payment to:

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John A. Carrigan, Section Chief
Solid Waste Management Section
Department of Environmental Protection
Northeast Regional Office
One Winter Street – 3rd Floor
Boston, Massachusetts 02108

In the event New Ventures fails to pay in full any civil administrative penalty on or before the date due under this Consent Order, and in the manner and form required by this Consent Order, New Ventures shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time the civil administrative penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, §6C.

VI. DISPUTE RESOLUTION

58. New Ventures may invoke the following dispute resolution procedures to challenge the factual basis underlying any Department demand for payment of the suspended penalty or any portion thereof made pursuant to Paragraph 55b. above. New Ventures shall seek dispute resolution by providing written notice to the Department within ten (10) business days of receipt of the Demand. New Ventures' written notice shall include a description of the nature of the dispute. Failure to provide the Department with such written notice of dispute within the ten (10) business day period shall constitute a waiver of New Ventures' right to dispute the matter.
59. The parties shall participate in a conference call or meeting to attempt to resolve the dispute within thirty (30) business days of the Department's receipt of New Ventures' notice of dispute.
60. If the parties are unable to resolve the dispute as a result of the conference call or meeting, New Ventures shall, within thirty (30) business days of said conference call or meeting submit a written Statement of Position to the Department. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the position of New Ventures and the basis for it, any action(s) New Ventures considers necessary to resolve the dispute, any factual data, analysis or opinion supporting New Ventures' position, and any supporting documentation upon which New Ventures' relies. Failure to provide such Statement of Position within the thirty (30) day period shall constitute a waiver of New Ventures' right to further dispute the matter.
61. Within sixty (60) business days after receipt of New Ventures' Statement of Position, the Department shall present a written Statement of Position to New Ventures. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the

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position of the Department and the basis for it, any action(s) the Department considers necessary to resolve the dispute, any factual data, analysis or opinion supporting the Department's position, and any supporting documentation upon which the Department relies.

62. The Statements of Position will be submitted to the Regional Director for the Department's Metropolitan Boston/Northeast Regional Office or his/her designee ("Regional Director") on the date the Department presents its written statement of Position to New Ventures. The Regional Director shall issue a final written decision on the dispute based upon the Statements of Position and any meeting with the parties if the Regional Director determines such a meeting is appropriate. The Regional Director's written decision shall constitute the final decision on the matter, which shall be binding on the parties and not subject to appeal.

VII. SUBMISSIONS

63. All submissions made to the Department by New Ventures shall be certified in accordance with the applicable provisions of 310 CMR 19.000, including but not limited to the requirements of sections 310 CMR 19.011, 19.031(11), and 19.043. All submissions required by this Consent Order shall, except as provided in Paragraph 57 above, be submitted to:

John A Carrigan
Solid Waste Section Chief
Massachusetts Department of Environmental Protection
Metropolitan/Boston Northeast Regional Office
One Winter Street – 3rd Floor
Boston, Massachusetts 02108

VIII. ACCESS

64. New Ventures agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order, including access to the Facility outside of normal operating hours in response to odor complaints. Notwithstanding any provisions of this Consent Order, the Department retains all of its access authorities and rights under applicable state and federal law.

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IX. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

65. This Consent Order shall not be construed as, or operate as, relieving New Ventures or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

X. MODIFICATIONS

66. This Consent Order may be modified only by written agreement of the parties hereto.

XI. SEVERABILITY

67. The provisions of this Consent Order are severable and if any provision of this Consent Order or the application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other provision of this Consent Order, or the application of such other provisions, which shall be given full effect without the invalid or unenforceable provision or application provided, however, that the Department may, in its sole discretion, elect to void the entire Consent Order in the event of any such invalidity or unenforceability.

XII. RATIFICATION

68. This Consent Order shall become effective on the date of the last signature set forth below.

69. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf such representative is signing to this Consent Order.

New Ventures Associates, LLC

By: William Thibeault

William Thibeault, President
New Ventures, LLC
85-87 Boston Street
Everett, Massachusetts 01249

Federal Employer Identification No. 364492639

Date: 4-13-05

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Department of Environmental Protection

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

By: Edward P. Kunce
Edward P. Kunce, Acting Regional Director
Northeast Regional Office
1 Winter Street – 5th Floor
Boston, Massachusetts 02108

Date: 13 Apr 05